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Ex Parte

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APR 5 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 5, 2001

Jodie Donovan-May
Federal Communications Commission
Common Carrier Bureau
445 – 12th Street, S.W.
5th Floor
Washington, D.C. 20554

RE: *Ex Parte* regarding Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket: 96-98

Dear Ms. Donovan-May:

Prior to the Industry Joint Meeting held in February to discuss operational issues involving the conversion of special access circuits to enhanced extended links (EELS), ALTS presented the Commission with a list of alleged difficulties experienced by some CLECs in their efforts to obtain EELs. This letter responds to the specific issues cited in the ALTS *ex parte* document regarding CLEC requests for conversions of special access services to EELs in Qwest's region.

Qwest has worked with diligence to assure compliance with the FCC's *Supplemental Order Clarification*. The requirements and processes associated with requesting conversions of special access circuits to EELs are well documented on Qwest's Website (www.qwest.com/wholesale/pcat/eel.html#), and Qwest has spent countless hours assisting CLECs in their efforts to submit conversion requests. It has been Qwest's experience that most of the delays and refusals in processing orders have resulted from CLEC misinterpretation of EEL requirements that resulted in improper conversion requests as well as errors

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in the information submitted by CLECs. Incorrect or incomplete circuit information, failure to certify that the circuits satisfy one of the Commission's three "significant amount of local exchange service" standards and requests that would improperly result in commingling of UNEs and tariffed services explain the majority of the delays, not "foot dragging, gamesmanship and intransigence" as claimed by ALTS. Qwest believes many of the claims made by ALTS in its *ex parte* represent grievances concerning policy decisions made by the Commission rather than true operational difficulties.

Following is Qwest's response to the specific issues raised in the ALTS *ex parte*:

Avista:
Issue: Avista serves Tier 3 and 4 markets in the Northwest. Avista cannot obtain EELs although it has heard promises from Qwest that it will make EELs available.
Response: Although Avista has asked for and received information regarding the pricing of EELs, the Qwest Account team has no record of a request for EELs from Avista.

e.spire:
Issue: Qwest requires a "pre-audit" even when the CLEC has submitted a self-certification letter.
Response: Using the Spreadsheet Template submitted by the CLEC (see step 4, below), Qwest verifies the information provided to assure accurate conversions of qualifying circuits. This pre-qualification process serves to determine whether the CLEC has provided accurate circuit ID and/or BAN numbers and end-user address information, whether they have certified to a local service option and assures that the requested conversion does not involve the commingling of UNE and tariffed services. This is not an audit. Rather, the template and the pre-qualification process serve to ensure compliance with the FCC's June 2 order addressing certification (paragraph 29) and commingling (paragraph 28), to provide information that could be used in the future to audit for compliance with the local service requirement, and to make sure that the circuit ID that the CLEC submits is the circuit that goes to the identified end user.

As described on the Qwest Wholesale Products and Services Website (URL: http://www.qwest.com/wholesale/pcat/eel.html#), following are Qwest's EEL-C process steps:

The Co-Provider must:
1. Provide a signed Interconnect Contract Amendment.
2. Submit a revised Product Questionnaire (this assures billing element changes are made to accomplish billing for the EEL-C).
3. Complete the Certification Letter and return it to their Qwest Account Manager.

4. Complete and return the Spreadsheet Template, which identifies the circuits to convert, to their Qwest Account Manager.

Note: Templates for all of these documents are provided on the website.

Using the Certification Letter and Spreadsheet Template, Qwest will perform the Circuit Validation and Pre-Qualification verification. This verification will determine whether:

1. The circuit exists in Qwest billing records
2. The end user name and address on the spreadsheet match that on the Qwest billing records
3. If certified under Option 1 or 2, the circuit involves collocation
4. The circuit will be connected to a Qwest tariffed service, otherwise known as "commingling." If the circuit is connected to a tariffed service, conversion will not be allowed.

Upon completion of the circuit validation and pre-qualification validation, Qwest will provide to the Co-provider a validation code for circuits that qualify.

Once rates are loaded in the billing system and Qwest has provided a validation code, Co-provider may place orders.

Issue: Qwest looks to e.spire's multiplexed DS3 in determining whether "significant amount of local exchange service" exists under tests laid out in the Supplemental Order Clarification.

Response: Qwest's actions are consistent with Paragraph 28 of the *Supplemental Order Clarification*: "We further reject the suggestion that we eliminate the prohibition on "co-mingling" (i.e. combining loops or loop-transport combinations with tariffed special access services) in the local usage options discussed above." Paragraphs 22 (2) and (3) of the *Supplemental Order Clarification* refer specifically to DS3 circuits: "...When a loop-transport combination includes multiplexing (e.g., DS1 multiplexed to DS3 level), each of the individual DS1 circuits must meet this criterion." This is an old issue that Qwest has previously responded to in a written *ex parte* filed with the Commission on September 29, 2000. (Copy attached).

Electric Lightwave, Inc.

Issue: Qwest is incorrectly defining a special access DS1 channel termination (loop) that passes through a Qwest provided M 1/3 multiplexer before terminating in an ELI collocate as an EEL subject to the "significantly local" certification process.

Response: Qwest has recently agreed to provide a "loop/mux-only" UNE-C for the conversion of a loop terminating onto a multiplexer and then directly into the CLEC's collocation space in the same serving wire center. Requests for this type of conversion do not require a "significantly local" certification.

Issue: *Qwest requires that new EELs be certified under one of the FCC significantly local options, although Qwest has been obligated to provide EELs as a new combination, separate and apart from the EEL Clarification Order.*
Response: In paragraph 4 of the *Supplemental Order* issued November 24, 1999, the FCC makes it clear that the ILECs may restrict the use of EELs: "..we modify our conclusion in paragraph 486 to now allow incumbent LECs to constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access service subject to the requirements in this Order". Qwest believes the certification requirement regarding local traffic applies to all EEL requests irrespective of their "new" or "conversion" status.

Issue: *Qwest refuses to convert qualifying circuits to EELs in situations that result in EELs and special access circuits riding on the same transport facility or passing through the same multiplexed system. Being required to segregate circuits on facilities that carry only EELs and UNEs is terribly inefficient.*
Response: ELI is seeking to commingle traffic, which is specifically not required per Paragraph 28 of the *Supplemental Order Clarification:* "We further reject the suggestion that we eliminate the prohibition on "co-mingling" (i.e. combining loops or loop-transport combinations with tariffed special access services) in the local usage options discussed above."

Issue: *ELI proposed that in lieu of requiring separate facilities for EELS and special access that Qwest simply ratchet the special access transport facility bills to reflect the lower prices for the percentage of facilities being utilized for EELs.*
Response: Qwest is complying with Paragraph 28 of the *Supplemental Order Clarification.*

Issue: *Another factor that carries significant weight in the EEL conversion equation is the assessment of termination liabilities for special access circuits currently under term discount plans. Qwest has refused to forgive or even adjust termination liabilities associated with converting existing special access circuits to UNEs. Qwest wants to extract huge termination liabilities from CLECs as if the CLECs were dropping Qwest's service altogether. That's clearly not the case. The CLECs will still be purchasing services from Qwest, just at a price that would allow the CLEC to compete. The FCC should mandate that no termination liability charges are to be assessed to CLECs converting circuits to UNE pricing. Especially given that CLECs are just now getting access to the UNE pricing that they have been legally entitled to since February 1996, and even earlier in some states*
Response: This reveals the pricing arbitrage issue for what it is. The CLEC simply wants to pay less for the exact same service. Term Discount plans are

tariffed offerings that allow lower unit pricing in exchange for a CLEC's commitment to purchase those tariffed services over a specified period of time. The termination liabilities exist in order to make the ILEC "whole" in the event a CLEC terminates its agreement earlier than planned for any reason. TLA (termination liability assessment) also recovers the costs an ILEC incurs to build the facility for the CLEC. Since CLECs are not required to commit to purchasing the service for an extended period of time once it has been converted to UNEs, an ILEC cannot be assured of recovering its construction costs. TLA provides the cost recovery mechanism. If an ILEC were unable to recover its cost to construct facilities, eventually, this cost would be passed to the ratepayer. To "forgive" the termination liabilities and then provide the exact same service at UNE rates would penalize the ILEC and its customers.

Issue: Qwest requires ELI to complete a new questionnaire, for each state, to trigger Qwest internal processes for loading rates in its billing system even though all the rates are already in the interconnection agreement. This unnecessary step imposed by Qwest only causes further delay. Qwest received ELI's completed questionnaires on September 9, 2000 and has not yet completed the billing system updates for ELI.
Response: The Qwest questionnaire allows a CLEC to indicate which states the requested billing changes should be applied to, and they may submit one form for multiple states by checking a box on the form for each applicable state. The information provided on the questionnaire is required to establish billing for any new element and offering. Qwest's records indicate ELI's completed questionnaires were received on September 18, 2000 and were submitted for billing system updates. Had ELI provided complete certification and spreadsheet information to enable Qwest to perform its pre-qualification, an effective billing date (EBD) would have been offered to ELI upon completion of the pre-qualification, irrespective of the status of the billing system updates.

Jato
Issue: Qwest simply refuses to offer EELs to CLECs for any other use than local voice service. Qwest has maintained in the CO 271 proceeding that the FCC's EEL Orders make it clear that an EEL can never be used in substitution for a special access/private line arrangement. They refuse to acknowledge the IXC distinction written into the Clarification Order or the plain language of the Act.
Response: Qwest policy regarding EELs is consistent with the terms of the *Supplemental Order Clarification*. A carrier may use an EEL as a substitution for a special access/private line arrangement subject to its certification that the circuit in question carries "significant local traffic" as described in the *Order*.

XO

Issue: *In the Qwest region, XO has encountered many of the same restrictions and limitations regarding conversion of existing access circuits to EELs and ordering new EELs described above by Electric Lightwave, Inc.*

Response: On March 9, 2001 XO requested the conversion of 26 circuits. Qwest is currently in the process of pre-qualifying these circuits for conversion.

Generic Issue

Issue: *Qwest is attempting to expand the scope of the FCC's Supplemental Orders concerning EELs, by including the following language In its interconnection agreement terms and conditions for dark fiber UNEs:*

> *[CLEC] shall not use UDF [Unbundled Dark Fiber] as a substitute for special or switched access services, except to the extent [CLEC] provides 'a significant amount of local exchange traffic' to its end users over the UDF as set forth by the FCC.*

Response: If dark fiber is ordered as a stand-alone UNE rate element, for example, as Unbundled Dark Fiber Inter office (UDF IOF) between two wire centers, Qwest does not require a certification as to "a significant amount of local exchange traffic". However, if Extended Unbundled Dark Fiber (E-UDF) or Extended Unbundled Dedicated Inter office (E-UDIT), elements that are equivalent to entrance facilities, are ordered, Qwest maintains the local exchange traffic requirement, consistent with the terms of the *Supplemental Order Clarification*.

Qwest remains committed to complying with the terms of the Commission's Order and working with CLECs to resolve issues that arise as the result of conversion requests. We will continue to cooperatively address issues as they arise. Please contact me if you have questions regarding this issue.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, an original and two copies of this letter in being filed with the Office of the Secretary for inclusion in the record of this proceeding.

Sincerely,

Melissa E. Newman

Melissa Newman

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Melissa E. Newman
Vice President-Federal Regulatory

September 29, 2000

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Written *Ex Parte* Statement of Qwest Corporation, Inc. in Response to Written *Ex Parte* Statement of e.spire Communications, Inc. Regarding the Conversion of Special Access Circuits to Unbundled Network Elements in CC Docket 96-98

Dear Ms. Salas:

The purpose of this ex parte is to respond to the letter filed by e.spire Communications, Inc. ("e.spire") on September 7, 2000 complaining that Qwest[1] is refusing to convert unbundled network elements ("UNEs") that will be combined with its tariffed special access services. Apparently, e.spire believes Qwest must allow unbundled loop-transport combinations to be combined with its tariffed special access services or be willing to perform any necessary "regrooming" of e.spire's facilities at no charge. Qwest believes that e.spire's demand does not comport with the Commission's June 2, 2000 *Supplemental Order Clarification* in CC Docket No. 96-98, FCC 00-183 or the definition of a UNE under Section 251(c) of the 1996 Act.[2]

The Commission established clear guidelines on the conversion of unbundled loop transport combinations in its *Supplemental Order Clarification.* In particular, the Commission found that the three options for satisfying the "significant amount of local exchange service" requirement presented in a February 28, 2000 Joint Letter submitted by a coalition of Incumbent Local Exchange Carrier's (ILEC's) (including Qwest) and

[1] On June 30, 2000, U S WEST, Inc., the parent and sole shareholder of U S WEST Communications, Inc., merged with and into Qwest Communications International Inc. Further, on July 6, 2000, U S WEST Communications, Inc. was renamed Qwest Corporation.

[2] 47 U.S.C. Section 251(c).

Competitive Local Exchange Carrier's (CLEC's) represented a reasonable compromise and adopted them as a safe harbor. Each of the three local usage options endorsed by the Commission "does not allow loop-transport combinations to be connected to the ILEC's tariffed services."

Indeed, the Commission expressly rejected the suggestion that it eliminate the prohibition on "combining loops or loop-transport combinations with tariffed special access services" in the local usage options. The Commission was concerned that removing this prohibition could lead to the use of unbundled network elements by carriers solely or primarily to bypass special access services. Although the Commission referred to the combination prohibition as a "commingling" prohibition, that term is somewhat misleading because there is no prohibition on the type of traffic that can be carried over an ILEC's tariffed special access services. Rather, the Commission confirmed that an ILEC may prohibit UNE loop-transport combinations from being combined with its tariffed transport service.

What e.spire is seeking to do is convert only the DS1 portion of its special access service to unbundled DS1 circuits at UNE rates. In e.spire's current configuration, all of the DS1 circuits it is requesting to convert to UNE rates are connected to tariffed DS3s which are not eligible for conversion under the *Supplemental Order Clarification*. Therefore, in e.spire's requested configuration, these unbundled DS1 circuits would be combined with Qwest's tariffed DS3 special access services. Fundamentally, a rule that would require an ILEC to combine UNE loop-transport combinations with its tariffed transport service in this manner would be contrary to the entire UNE structure, as it would simply create a new tariffed service at a lower price. A special access service is a point-to-point service. If an ILEC provides a UNE loop "facility" from the customer premises to a wire center and connects that facility directly to its tariffed point-to-point special access service between a wire center and another premises (or Point of Presence), the result is simply a unified special access service between the two end points. The only difference would be the price of the service. Clearly, tariffed special access services are not UNEs, and carriers purchasing special access services must pay the tariffed rate for the service.

Further, if the Commission were to define a new UNE consisting of a UNE loop connected by the ILEC to the ILEC's tariff special access circuit, that UNE would not satisfy the impairment standard for unbundling set forth in Section 251(d)(2) of the 1996 Act. As discussed above, the end-to-end circuit would be nothing more and nothing less than a special access circuit. It would be essentially circular to claim that failure to obtain access to a special access circuit impeded competition when that same special access circuit already is available -- under tariff -- as required by the Commission. It should also be noted that requiring ILECs to combine UNEs and tariffed services on behalf of requesting carriers would directly contravene the Eighth Circuit's recent decision[3] reaffirming that the Commission does not have the authority to mandate UNE combinations.

[3] Iowa Utils. Bd. v. FCC, 219 F.3d 744 (D.C.Cir. 2000).

It should not be surprising that carriers such as e.spire might need to reconfigure their legacy networks in order to take advantage of the rate reductions available under the *Supplemental Order Clarification.* However, the fact that e.spire has chosen to provide local exchange service using Qwest's federally tariffed special access services does not mean it is entitled to have Qwest regroom these circuits for free. If anything, this shows that carriers can provide competitive local service without receiving access to loop-transport combinations at UNE rates. In any event, Qwest's federally tariffed regrooming rate of $122.50 per circuit provides a cost-efficient means for e.spire to reconfigure its network consistent with the *Supplemental Order Clarification.* For example, in one Central Office e.spire could regroom 67 DS1 circuits at a cost of $8,207.50 and receive the benefit of $10,176 in savings off the monthly tariffed rate for these circuits. *That means e.spire would recover the cost of regrooming the 67 circuits in just 25 days, and the savings would continue as long as the circuits are in service.* (See Attachment 1) e.spire would experience additional savings after it regrooms because it would have to convert the DS3s that carry the UNE-C DS1s to combinations, thereby receiving the benefit of UNE rates. Moreover, once this one-time regrooming is performed, e.spire would be in a good position to add new local service customers using UNE loop-transport combinations.

In summary, there is no basis for e.spire's demand that Qwest reconfigure its existing network at no charge to facilitate the conversion to UNE rates. Qwest reasonably expects that e.spire should be willing to pay the relatively modest cost of regrooming its existing circuits in order to take advantage of the significant rate reductions available under the *Supplemental Order Clarification.*

Sincerely,

Melissa E. Newman

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Vice President-Federal Regulatory
Qwest

Attachment 1
Qwest *Ex Parte*
September 28, 2000

Regrooming example:
Specific circuit information withheld to protect proprietary customer information.

ILLUSTRATIVE, NOT INTENDED TO REPRESENT MOST EFFICIENT REGROOMING

Tariffed DS3	Used channels on	Current configuration # DS1s	Status	Regroomed configuration # DS1s	Status	# Regrooms
X01 T3	16	7	Tariffed	0	Tariffed	0
		9	UNE-C	15	UNE-C	6
X02 T3	12	10	Tariffed	17	Tariffed	7
		2	UNE-C	0	UNE-C	0
X03 T3	24	13	Tariffed	13	Tariffed	0
		10	LIS	10	LIS	0
		1	UNE-C	0	UNE-C	0
X04 T3	7	1	Tariffed	24	Tariffed	23
		6	UNE-C	0	UNE-C	0
X05 T3	19	8	Tariffed	0	Tariffed	0
		11	UNE-C	23	UNE-C	12
X06 T3	17	12	Tariffed	12	Tariffed	0
		5	UNE-C	0	UNE-C	0
X07 T3	22	15	Tariffed	0	Tariffed	0
		7	UNE-C	26	UNE-C	19
X08 T3	17	9	Tariffed	9	Tariffed	0
		8	UNE-C	0	UNE-C	0
X09 T3	20	16	Tariffed	16	Tariffed	0
		4	UNE-C	0	UNE-C	0
X10 T3	22	16	Tariffed	16	Tariffed	0
		6	UNE-C	0	UNE-C	0
X11 T3	20	16	Tariffed	16	Tariffed	0
		4	UNE-C	0	UNE-C	0
X12 T3	21	20	Tariffed	20	Tariffed	0
		1	UNE-C	0	UNE-C	0

Total # DS1s	
Tariffed	64
LIS	10
UNE-C	143
Total	217

In the regroomed configuration there are no DS3s that carry both UNE-C and Tariffed services. The pure DS3s that carry only UNE-C DS1s can (and must) be converted to UNE-C so that "their" DS1s can be converted.

Total DS1s regroomed	67
FCC regroom rate	$ 122.50
Total regroom charges	$ 8,207.50

Approx conversion savings	$ 10,176 per DS1, based on all circuits requested to be converted
Payback period	25 calendar days, based on a 31 day month